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EXAMINER	
KHAN, AMINA S	

ART UNIT	PAPER NUMBER
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/544,165
Filing Date: July 29, 2005
Appellant(s): TZIKAS ET AL.

Robert Holthus
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 13, 2011 appealing from the Office action mailed September 29, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 8,11 and 13 are pending.

Claims 1-7,9,10 and 12 were cancelled.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

US 6,160,101	TZIKAS et al.	12-2000
US 6,537,332	TZIKAS et al.	3-2003
WO 00/06652	TZIKAS et al.	2-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 8,11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tzikas et al (US 6,160,101) in view of Tzikas et al (WO 00/06652). The Tzikas '652

document is not in English so the English equivalent document, US 6,537,332, is being relied upon for citation purposes.

Tzikas et al '101 teach a reactive dye compositions for dyeing and printing fiber materials containing hydroxyl groups and nitrogen (column 25, lines 31-32) comprising dyes of instantly claimed formula (101) (column 46, lines 45 and lower; compound of formula 102). Tzikas et al '101 teach that such dyes can be obtained as mixtures (column 24, lines 36-42). Tzikas '101 et al. teach applying the compositions in the form of aqueous compositions and printing with them, which meets the limitation of aqueous ink (column 25, lines 45-60).

Tzikas '101 et al do not teach the reactive dyes of formula (102) or (8).

Tzikas et al. '332 teach dyeing and printing hydroxyl or nitrogen containing fiber materials (column 9, lines 10-25) with dyes of instantly claimed formula (102) (columns 23 and 24, formula (107)) and dyes of formula (8) (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dyes of Tzikas '101 by incorporating the dyes taught by Tzikas '332 because both references are directed towards effectively dyeing similar textiles for the benefits of high degrees of fixing and light/was fastness. It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art. *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). See MPEP 2144.06.

(10) Response to Argument

Response to Argument 1.

The Appellant argues it would not be obvious to combines dyes (101) and (102) from the Tzikas '101 and '652 references because of the superior build-up properties demonstrated by the dye mixture as highlighted in the Declaration under 37 CFR 1.132. The Appellant also argues that the Tzikas references combined could not predict the high degree of fixing, high tinctoral strength, high fiber binding stability in both an acidic and an alkaline range and good all around fastness to light and wetness as the instantly claimed dye mixture.

The examiner respectfully disagrees and argues that both Tzikas '101 and '652 are directed towards dyes for dyeing similar fabrics for the benefits of high tinctoral yield, high reactivity, high degrees of fixing and good all around properties such as light and wetfastness (column 1, lines 15-30 of Tzikas '101; column 1, lines 5-31 of Tzikas '332 (English equivalent of Tzikas '652)). It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art. *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). See MPEP 2144.06. It is well known in the art of dyeing to combine dyes useful for dyeing similar fabrics for shading purposes to arrive at different hues. The examiner further argues that it is obvious to combine dyes from a finite set of predictable solutions as

taught by the Tzikas references to provide the benefits highlighted above to the dyed fabric. When selecting from a laundry list, the Board has held that the comprehensiveness of a list did not negate the fact that the compound claimed was specifically taught (MPEP 2131.02), as were the compounds of formulas (101) (Tzikas '101: column 46, lines 45 and lower; compound of formula 102) and (102) (Tzikas '332: columns 23 and 24, formula (107)).

Regarding the results filed in the Declaration under 37 CFR 1.132, the examiner argues that the results are not commensurate in scope with the instant claims as the claims are directed towards dye mixtures with dyes (101) and (102) in the broad ratio of 10:90 to 90:10 while the declaration only provides data for a single dye combination of dyes (101) and (102) in a ratio of 22:78. To establish unexpected results over a claimed range, appellants should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. In re Hill, 284 F.2d 955, 128 USPQ 197 (CCPA 1960). Furthermore, the data shown in Table 1 on page 3 of the declaration vary at different concentration points with regards to the degree of difference between the color strength of the inventive dye mixture and that of the prior art. Several of the data points show a change of from approximately 5-9% (concentrations 1,6 and 8%) while one data point is 24% (0.5%). The examiner argues that the appellant has not indicated what level of difference rises to a level of unexpectedly superior. To be probative of nonobviousness results must be unexpected not just different. In re Merck & Co 800 F.2d 1091,1098,231 PQ 375, 380 (Fed Cir 1986).

Regarding Appellant's assertion that good fastness properties were observed for a dye species at ratio 15:85 on page 22, line 20 to page 23, line 6 of the Appellant's specification, no comparative data has been provided.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Amina Khan/

Primary Examiner, Art Unit 1764

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1764

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